

NTSB Order No. EA-4235

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 17th day of August, 1994

Respondent .

Docket SE-13694

6437

violated 14 C.F.R. 43.12(a)(1) [falsification of maintenance records] and 43.15(a)(1) [failure to determine whether aircraft under inspection meets applicable airworthiness requirements]² in connection with an annual inspection respondent claims he performed on a North American Navion aircraft. For the reasons discussed below, respondent's appeal is denied and the initial decision is affirmed.

On April 14, 1994, respondent signed an aircraft logbook entry certifying that he had performed an annual inspection on the subject aircraft (N827JR) and found it to be airworthy as of that date. (Exhibit A-1.) At all times relevant to this case the aircraft was located at a small airport in Midland, Texas. The operator of a maintenance facility at the airport (Dwayne Moore) testified that on April 14, he saw respondent walk around the aircraft and lift one engine cowl, but that he did not see

² **§ 43.12 Maintenance records: Falsification, reproduction, or alteration.**

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part;

* * *

§ 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter, shall --

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements;

* * *

respondent perform any work on the aircraft.³ Mr. Moore testified that respondent left 50 minutes after arriving. (Tr. 80-82.) Mr. Moore immediately alerted FAA Airworthiness Inspector Michael Jordan that respondent's sign-off might not have been based on an adequate inspection. Inspector Jordan inspected the aircraft that same day and found the following discrepancies:

1. Airworthiness certificate did not reflect the current registration number;
2. Rotating beacon was inoperative; and
3. Exhaust tail pipe hangars were missing on the left side of the engine.

Inspector Jordan left the airport, and returned later the same day to place an aircraft condition notice on the plane, indicating that the three above-listed discrepancies were considered to be an imminent hazard to safety and that operation of the aircraft prior to correction would be contrary to the Federal Aviation Regulations. (Exhibit A-3.) The owner of the aircraft testified that after Inspector Jordan's first visit on April 14, but before his second visit that day (when he issued the condition notice), the owner flew the aircraft to and from another airport, where he had the aircraft washed.

The next morning, Inspector Jordan returned to the airport

³ Mr. Moore testified that the airport operator had called him that morning and informed him that someone was to perform a "drive-by" annual inspection that day, and had asked him to watch for it and report the situation to the FAA. (Tr. 79, 82.) There is no indication in the record of how the airport operator learned of this information.

and conducted a more detailed inspection of the aircraft, which had by that time been brought to Mr. Moore's maintenance facility at the airport, and found the following additional discrepancies:

4. Carburetor air heat hose was missing;
5. Exhaust manifold was loose on the right side;
6. Turn and bank was inoperative, and not placarded;
7. Landing gear warning switch on throttle was inoperative;
8. A compression test had not been done [evident because of rust on spark plugs];
9. Wheel bearings had not been inspected [evident because of dirt on bearings]; and
10. Engine driven hydraulic pump pressure outlet fitting was chaffed through at least 70% of the wall thickness.

Approximately two weeks later, Mr. Moore again summoned Inspector Jordan to his maintenance facility, where the aircraft was still being examined and repaired, to observe the following additional discrepancies:

11. ELT battery was expired;
12. Birds nest found in right wing inside landing gear wheel well; and
13. Right hand fuel tank scupper line stopped up with mud dauber nest.

At the hearing, Inspector Jordan testified that these items should all have been discovered during an annual inspection. He testified that because of these discrepancies the aircraft was neither airworthy nor safe for flight, and concluded that, in spite of the logbook entry signed by respondent, the aircraft had not received an annual inspection "that came close to meeting the

required items in [14 C.F.R. Part] 43, Appendix D."⁴ (Tr. 38, 20, 27, 70-71.)

Respondent concedes that no annual inspection was performed on April 14, the day he signed the logbook entry certifying its completion. He maintains, however, that he performed the inspection one month earlier during the nighttime hours of March 14 and 15. The aircraft owner was apparently out of town at that time, and respondent was unable to sign the aircraft logbook because it was unavailable. Therefore, he asserted that he returned to the airport on April 14, in order to "complete" the inspection by reviewing the Airworthiness Directive notes and signing the logbook. Respondent indicated that it takes 6 to 8 hours to drive from his home to the airport where this aircraft is based. He testified that he has performed several annual inspections on this aircraft, and that \$250 is his standard rate for an annual inspection.⁵

Although respondent offered no explanation as to why he did the annual inspection during the night, he entered into evidence what purported to be a written statement by a mechanic trainee named Sheri Smith, describing the circumstances under which she allegedly helped him work on the aircraft on those nights.

⁴ Part 43, Appendix D sets forth the minimum scope and detail of items to be included in an annual inspection. (Exhibit A-2.)

⁵ Inspector Jordan opined that an annual inspection on this aircraft would take about 20-25 hours and might cost between \$800 and \$1,500. (Tr. 37.) Mr. Moore testified that an annual inspection would take approximately 23-26 hours, and would cost \$800 to \$900. (Tr. 87.)

(R-4.) As recited in that statement, "I asked why the urgency of working in the cold at night and Adams told me there were some small airport political problems and it would be better for everyone if we did the work at night." Respondent also offered into evidence what purported to be a copy of a checklist of items he accomplished during his annual inspection of the subject aircraft, and claimed that he placed the original in the owner's aircraft logbook.⁶

Respondent challenged the relevance of the inaccurate airworthiness certificate (item #1), noting that he was not responsible for its accuracy. He also asserted that the rotating beacon (item #2) was intermittently operative when he inspected it, and that this was sufficient;⁷ and that the turn and bank (item #6) was merely noisy, not inoperative. He denied that any of the other deficiencies noted by Inspector Jordan existed at the time of his inspection.

Inspector Jordan acknowledged that the inaccurate airworthiness certificate (item #1), although a bar to legal operation of the aircraft, was not a discrepancy for which respondent was responsible. (Tr. 47, 51.) He also testified that, although the expired ELT battery (item #11) is something

⁶ The owner, who testified at the hearing as a witness for the Administrator, was not questioned by either party about the existence of such a checklist.

⁷ Inspector Jordan testified that an intermittently operating beacon is considered inoperative. His inspection revealed that "the problem with the beacon was that it popped the circuit breaker continuously [indicating that there was] a direct short to the ground." (Tr. 26.)

that would normally be addressed during the course of an annual inspection, it is not a requirement. (Tr. 34.) Further, the owner of the aircraft testified that he had removed the carburetor air heat hose (item #4) shortly after respondent signed off on the annual inspection. Thus, on this record, responsibility for these discrepancies (#1, #11, and #4) cannot be attributed to respondent.⁸

The law judge held that the discrepancies found by Inspector Jordan could only have been caused "through some hard wear and tear on the . . . aircraft." (Tr. 171.) In light of the fact that the aircraft made only one short flight between the time of respondent's purported annual inspection and the discovery of the discrepancies, the law judge found that the annual inspection, "if done at all, was certainly done in violation of [section] 43.15(a)(1)." (Tr. 173-74.)

In discussing whether respondent had performed an inspection at all, the law judge noted that "the document that purports to be the checklist" respondent used while performing the annual inspection (Exhibit R-3) was apparently not in the aircraft logbook obtained by Inspector Jordan just hours after respondent signed it. He also described Exhibit R-4 as the "statement of a

⁸ Respondent has filed a motion to strike most of the factual allegations in the complaint. Despite the fact that certain of the allegations -- specifically, the items discussed above, as well as the fact that an aircraft condition notice was issued -- may not be directly relevant to the violations alleged against respondent, all of the factual allegations were established in the record. We therefore decline to strike any of them.

mystery woman [indicating] that she went out with Mr. Adams, and in the middle of the night, they did the work on this airplane because there was some political problems going on at this airport and it was better to come in in the middle of the night, in the cold of night, and work at this small airport." He noted that the statement was not notarized, contained no address or telephone number, and "there is no way of knowing whether this person exists." (Tr. 173-74.) The law judge then made an explicit credibility finding against respondent, stating "I don't believe this checklist; I don't believe this mystery lady's letter. I believe that the evidence has established by a preponderance that there was an intentionally false entry made in the record . . . I am satisfied . . . that Mr. Adams did a drive-by inspection." (Tr. 175.) Accordingly, the law judge affirmed the section 43.12(a)(1) falsification charge.

On appeal, respondent takes issue with what he views as improprieties in Inspector Jordan's conduct. Specifically, respondent claims that Jordan's position that the three discrepancies noted at his initial inspection were serious enough to warrant immediate grounding of the aircraft by the aircraft condition notice he eventually issued, is inconsistent with his failure to immediately issue the notice and with his alleged statements to the aircraft owner at the time of the initial inspection that the annual inspection was valid and the aircraft could be legally flown. Respondent also claims that Inspector Jordan gave false testimony on several points, and that he was

prejudiced and biased against respondent. Accordingly, respondent reasons, Inspector Jordan's testimony cannot be relied on to establish the deficiencies alleged by the Administrator in this case, and thus there is insufficient proof that he did not perform the annual inspection.

Regarding the alleged inconsistency between Inspector Jordan's failure to immediately issue a condition notice upon discovery of the three discrepancies contained therein, and his stated position that these discrepancies warranted immediate grounding of the aircraft, we note first that respondent has mischaracterized Inspector Jordan's testimony. Inspector Jordan agreed with respondent's representative on cross-examination that, at the time of his initial inspection (when he knew of only the first three discrepancies), the annual inspection respondent had apparently performed would be considered valid *if these three items were repaired*. (Tr. 56.) Although he testified that the aircraft could have been legally operated prior to issuance of the condition notice (Tr. 57), he also testified that he responded to the aircraft owner's question as to whether he could operate his plane the next day by saying he thought the three discrepancies could be fixed prior to that time, thus suggesting that -- despite his non-issuance of a condition notice at that time -- Inspector Jordan did not expect the owner to operate the aircraft until after the items had been repaired. (Tr. 55-56.)

In any event, neither Inspector Jordan's reasons for delaying issuance of a condition notice, nor any arguable

inconsistency in his position, are of any relevance to the violations at issue in this case. Respondent's violations were proved by evidence showing that the condition of the aircraft at the time of his sign-off was such that he could not have performed a proper annual inspection. The law judge, who listened to all of the testimony, credited Inspector Jordan's testimony as to the condition of the aircraft.⁹ To the extent respondent intends to argue that Jordan's failure to immediately issue the condition notice indicates that the discrepancies contained therein were not safety-related, any such implication was dispelled by the plain language of the condition notice (indicating that the items were considered an imminent hazard to safety), and by Inspector Jordan's testimony that the discrepancies were indeed safety-related.

Regarding respondent's allegations that Inspector Jordan knowingly gave false testimony on several points and that we are therefore precluded from relying on any part of his testimony, we find these charges to be wholly unsubstantiated.¹⁰ Respondent's

⁹ This was, at least in part, a credibility finding which we will not overturn unless the law judge acted arbitrarily, capriciously, or the result is incredible or against the overwhelming weight of the evidence, factors not present here. Administrator v. Wilson, NTSB Order No. EA-4013 at 4-5 (1993).

¹⁰ Respondent's assertion that Inspector Jordan could not have placed the condition notice on the canopy handle on the left side of the aircraft because this particular aircraft has no such handle on the left side, is unsubstantiated in the record. Although respondent attaches to his brief copies of photographs purporting to show that the handle is actually in the top center of the canopy, no such evidence was submitted at the hearing and the photos are thus improperly proffered at this stage. Moreover, to the extent Inspector Jordan may have mistakenly

claim that Inspector Jordan was prejudiced against him is apparently based on the aircraft owner's testimony that Inspector Jordan told him the FAA was "after" respondent, and were "going to get his ticket." (Tr. 118.) Even if statements to this effect were made -- we note Inspector Jordan was never asked whether they were made, and the law judge made no credibility finding as to the owner's claim that they were -- we are not convinced that they evidence any improper prejudice or bias against respondent. Nor do they invalidate the law judge's acceptance of Inspector Jordan's testimony as to the condition of the aircraft, and his findings that respondent violated the cited regulations.

In sum, we see no basis for disturbing the law judge's findings that the discrepancies listed in the complaint existed at the time of respondent's sign-off¹¹ and that respondent did

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recalled the exact location where he placed the condition notice, we see no basis for concluding that such a minor error taints the remainder of his testimony.

As for respondent's claim that Inspector Jordan misrepresented the date of his third inspection of the aircraft, we note that Jordan agreed that his inspection was probably the Monday after April 28, and not on April 28 (the date cited in the complaint). Thus, the error, if any, was in the order of revocation/complaint, not in Inspector Jordan's testimony. The law judge noted, and we agree, that such an error is not fatal to the Administrator's case. (Tr. 69.) Finally, we see no support in this record for respondent's assertion that Inspector Jordan testified falsely about witnessing a gear retraction test on the aircraft.

¹¹ As noted above, the law judge credited the owner's testimony that he removed the carburetor air heat hose (item #4) after the sign-off, and thus held that respondent was not responsible for this discrepancy. (Tr. 170.) Nor, as also noted above, are items #1 and #11 attributable to respondent. We find

not perform an annual inspection of the aircraft.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision is affirmed, as consistent with this opinion and order.

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

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the remaining discrepancies, however, sufficient to support the regulatory violations and sanction affirmed in this case.